

Lore of the Corps

Misbehavior Before the Enemy and Unlawful Command Influence in World War II: The Strange Case of Albert C. Homcy

Fred L. Borch

Regimental Historian and Archivist

Question (Trial Counsel): “Do you recall, sir, whether you were receiving enemy fire at this time?”

Lieutenant Colonel (LTC) Bird: “Yes, sir.”

Question: “Were you in contact with the enemy?”

LTC Bird: “You bet we were.”

Question: “On or about 27 August 1944, did you give the accused a mission to accomplish?”

LTC Bird: “Yes.”

Question: “What was that mission?”

LTC Bird: “That mission was to accompany a patrol to seek out and destroy one or more self-propelled guns or tanks.”

* * * *

Question: “Did the accused carry out this mission as ordered?”

LTC Bird: “No, sir.”¹

On 27 August 1944, LTC William A. Bird, the commanding officer of the 1st Battalion, 141st Infantry Regiment, 36th Infantry Division, was in his battalion’s command post, located near Concourdia, France. Bird and his staff were under fire from German tanks or self-propelled artillery, and something had to be done to stop the murderous fire. Lieutenant Colonel Bird assigned the mission to seek out and destroy these German guns to 28-year-old Second Lieutenant (2LT) Albert C. Homcy, an anti-tank platoon leader in his battalion. Homcy was to accompany a hastily assembled unit of cooks, bakers and orderlies on a “strong patrol” to “destroy, with bazookas or grenades, those guns or whatever they were, as soon as possible.”²

Lieutenant Homcy refused LTC Bird’s order and, despite entreaties from Bird, 2LT Homcy persisted in

declining to obey him. As a result, 2LT Homcy was relieved from command and court-martialed for “misbehavior before the enemy.” On 19 October 1944, a panel of five officers convicted him as charged and sentenced him to be dismissed from the Army, to forfeit all pay and allowances, and to be confined at hard labor for fifty years.³

What follows is the story of Homcy’s court-martial, the role played by unlawful command influence in it, and the strange resolution of his case many years later.

Born on 25 April 1916 in New Jersey, Albert C. Homcy was a high school graduate who was working as a forester and machinist when he enlisted in the New Jersey Army National Guard on 25 January 1938. After Congress authorized the induction of reservists in August 1940 and enacted the nation’s first peacetime draft the following month, Homcy was called into federal service.⁴

In November 1942, after satisfactorily completing Officer Candidate School, then Sergeant Homcy was discharged to accept a commission as a 2LT. Almost one year later, on 21 August 1943, Homcy landed with the 36th Infantry Division in North Africa. He performed well in combat and, while in Italy in December 1943, was “commended for exceptionally meritorious conduct.”⁵ According to the official citation, 2LT Homcy “was second in command of a group assigned the task of carrying ammunition, food, water and clothing to front-line troops.” Despite being “subjected to almost constant enemy artillery and mortar fire, sometimes crawling on their hands and knees to achieve their objective,” Homcy and his men accomplished their mission “without losing a single load of vital supplies.”⁶ In July 1944, Homcy’s regimental commander, Colonel Paul D. Adams, likewise lauded Homcy’s “exemplary courage and determination” in combat,

³ Headquarters, Mediterranean Theatre, Promulgating Order No. 92 (21 Nov. 1944) [hereinafter Promulgating Order No. 92].

⁴ *Id.*

⁵ *Id.* Commendation, 2d Lt. Albert C. Homcy, Headquarters, 36th Infantry Division (n.d.) (Allied Papers).

⁶ Transcript of Record at 8, *supra* note 1. Commendation, 2d Lt. Albert C. Homcy, Headquarters, 36th Infantry Division (n.d.) (Allied Papers). Until the creation of the Bronze Star Medal in late 1944, Soldiers like Homcy who committed acts of bravery for exceptionally meritorious conduct in combat received written commendations from their regimental or higher commanders.

¹ Transcript of Record at 8, United States v. Albert C. Homcy, CM 271489 (19 Oct. 1944) (on file with Regimental Historian).

² *Id.*

which Adams acknowledged had contributed “materially to the success of our operation.”⁷

On 15 August 1944, 2LT Homcy and the 36th Infantry Division landed in southern France as part of Operation Dragoon. Twelve days later, on 27 August, Homcy was with the division as it advanced through the Rhone River Valley. According to testimony presented at his general court-martial, Homcy was the battalion’s anti-tank officer and had received an order from LTC Bird, relayed to Homcy through the battalion adjutant, Captain (CPT) John A. Berquist, to accompany eleven or twelve Soldiers on a patrol. Their mission: locate and then use bazookas to destroy German guns firing on the battalion command post.

Homcy refused to obey this order. He explained his reasons in his sworn statement at trial:

Q: Did you have a conversation with Colonel Bird on this date?

A: Yes, sir. I called Colonel Bird by telephone approximately forty-five minutes after I received the initial order from Captain Berquist and I told Colonel Bird that I couldn’t take those men on patrol as they weren’t qualified to do the work and I didn’t think they were capable. He said he would have to prefer charges and placed me under arrest.

Q: Are you sure you told him that you couldn’t take those particular men?

A: Yes, I am positive. I told him I didn’t think those men were qualified and I couldn’t take those particular men.

Q: So as far as you know, had any of these men who came from the kitchen—the cooks and orderlies—done any patrolling?

A: They had never done any patrolling to the best of my knowledge.

Q: With those men under those conditions did you believe it was possible for you to accomplish your mission?

A: No, sir. It was quite impossible. The mission itself was quite impossible but

⁷ 1st Indorsement, Colonel Paul D. Williams, to 2d Lt. Albert C. Homcy (14 July 1944) (Clemency Matters).

with men like that it made it so much more impossible.⁸

Under cross-examination, 2LT Homcy further explained that the cooks, bakers, ammunition handlers, and orderlies that he had been ordered to lead into combat were so unqualified that he “would jeopardize their lives if I took them on a patrol of that nature.”⁹ Since he did not want to take Soldiers on a patrol where “they would get killed doing something they knew nothing about,” 2LT Homcy refused to obey LTC Bird’s order.¹⁰

The fluid tactical situation meant that it was not until 10 September 1944 that LTC Bird preferred a single charge of misbehavior before the enemy against 2LT Homcy. Major General John E. Dahlquist, the 36th Infantry Division commander, referred the charge to trial by general court-martial on 18 September and, on 19 October 1944, a five-officer panel consisting of one major, three captains, and one first lieutenant convened to hear the evidence. While the trial counsel, CPT John M. Stafford, was a member of the Judge Advocate General’s Department, the defense counsel, Major Benjamin F. Wilson, Jr.,¹¹ was not a lawyer. But this was not unusual and, in any event, legally qualified counsel for an accused was not required by the Articles of War.¹² The charge and its specification read as follows:

Violation of the 75th Article of War.

In that 2d Lt. Albert C. Homcy . . . did, in the vicinity of La Concourdia, France, on or about 27 August 1944, misbehave himself while before the enemy, by refusing to lead a patrol on a mission to detect the presence of two enemy tanks or self-propelled guns, after being ordered to do so by Lt. Col. William A. Bird, his superior officer.¹³

⁸ Transcript of Record at 26, *supra* note 1.

⁹ *Id.*

¹⁰ *Id.* at 27.

¹¹ Benjamin F. Wilson, Jr., was a Field Artillery officer and had completed two years of law school prior to entering the Army. He had considerable experience, especially when measured by today’s standards of practice. Before defending Second Lieutenant Homcy, Major (MAJ) Wilson had served as a panel member in more than 100 general and special courts-martial. He had been detailed as the defense counsel at between 50 and 100 general courts-martial and between 50 and 100 special courts-martial. Finally, Wilson also had served as the prosecutor at between 50 and 100 special courts-martial. Transcript of Record, *supra* note 1, Questionnaire for Benjamin F. Wilson, Jr. (25 Apr. 1968), United States v. Albert C. Homcy, CM 271489 (19 Oct. 1944) (Allied Papers).

¹² Articles of War, 2 Stat. 359 (1806), reprinted in WILLIAM WINTHROP, MILITARY LAW AND PRECEDENTS 976 (2d ed. 1920 reprint).

¹³ *Id.* at 4.

While testimony about LTC Bird's order was uncontradicted, 2LT Homcy sealed his own fate when he admitted, under oath, that he had intentionally disobeyed the order to lead the combat patrol. Not only did he refuse Bird's order, but Homcy admitted to a most aggravating factor:

Q: Lieutenant . . . is it not true that you received an order to accompany a patrol of men on a mission to detect the presence of two enemy tanks or self-propelled guns?

A: I received an order to take certain men up on a patrol after certain self-propelled guns.

Q: Is it not true that having received this order that you refused to obey the order *in the presence of the enemy*?¹⁴

A: Yes, sir.¹⁵

Homcy's trial, which had started at 1450 on 19 October, finished just two-and-one-half hours later, at 1735. The panel found 2LT Homcy guilty as charged. The members sentenced him to forfeit all pay and allowances and to be dismissed from the service. They also sentenced him to fifty years' confinement at hard labor.¹⁶ Although the record does not reflect Homcy's reaction, the twenty-eight year old officer must have been shocked at the lengthy term of imprisonment.

But then a curious thing happened. On 23 October 1944, all five panel members signed a letter requesting clemency for 2LT Homcy, which they forwarded to Major General Dahlquist. The panel members wrote that Homcy's "announcement on the witness stand that he did in fact commit the offense" meant that the punishment that they had

¹⁴ Under the 75th Article of War, a conviction for "misbehavior before the enemy" required some nexus between the accused's acts and the enemy forces. In discussing the offense, the 1928 *Manual for Courts-Martial (MCM)*, which controlled the proceedings in Homcy's case, noted that "whether a person is 'before the enemy' is not a question of definite distance, but is one of tactical relation." *MANUAL FOR COURTS-MARTIAL, UNITED STATES* para. 141a discussion (1928) (emphasis added). Consequently, explained the *Manual*, where an accused was in the rear echelon of his battery (some 12–14 kilometers from the front line), if the forward echelon of his battery was engaged with the enemy, the accused was guilty of misbehavior before the enemy if he left the rear echelon without authority—even though this rear echelon was not actually under fire. It follows that when Homcy admitted that he had been in the "presence of the enemy" at the time he disobeyed LTC Bird's order, Homcy was admitting to an element of the offense. *Id.*

¹⁵ Transcript of Record at 4, *supra* note 1.

¹⁶ Promulgating Order No. 92, *supra* note 3.

imposed was "commensurate with the offense."¹⁷ But, the panel nevertheless believed that 2LT Homcy could "be rehabilitated" and could "be of value to the Service." Consequently, the members recommended to Dahlquist that he reduce Homcy's confinement to ten years and that Dahlquist suspend the execution of the sentence so that Homcy could be "returned to a duty status through reassignment in a non-combat unit."¹⁸

Lieutenant Colonel Stephen J. Brady, the division's staff judge advocate, reviewed Homcy's record of trial on 23 October 1944. In a memorandum for Major General Dahlquist, LTC Brady agreed "that the sentence adjudged is unnecessarily severe." But, wrote the staff judge advocate, "even if activated by the desire to protect his untrained men," 2LT Homcy's misbehavior before the enemy in refusing to obey a lawful order to lead a combat patrol required that "some punishment should be given." Consequently, LTC Brady recommended that Dahlquist approve the sentence as announced by the court-martial panel, except that the fifty years' confinement be reduced to ten years' imprisonment.¹⁹ Major General Dahlquist concurred with Brady's recommendation when he took action on Homcy's case the next day. Shortly thereafter, Homcy was shipped to Oran, Algeria, where he was confined in the Army's Disciplinary Training Center located there. A three-member Board of Review subsequently confirmed the findings and sentence on 21 November 1944 with the result that, on 5 December 1944, Homcy ceased to be an officer of the Army.

Shortly thereafter, "General Prisoner" Homcy left Algeria and was confined at the U.S. Disciplinary Barracks in Stormville, New York. Unhappy with his circumstances, he began to look for ways to overturn his court-martial conviction. On 27 July 1945, Mr. A.S. Hatem wrote to the Secretary of War on Homcy's behalf, insisting that Homcy had been wrongfully convicted because he "had no knowledge of his trial and was unable to make any preparations for his defense."²⁰ After an investigation, the War Department replied to Hatem that the record in Homcy's case showed that Homcy "was ably defended at his

¹⁷ Transcript of Record, *supra* note 1, Letter, Major Harry B. Kelton, CPTs Isadore Charkatz, Elden R. McRobert, Lowell E. Sutton, & 1LT Charles Hickox, to Commanding General, 36th Infantry Division, subject: Clemency (24 Oct. 1944), *United States v. Albert C. Homcy*, CM 271489 (19 Oct. 1944) (Allied Papers).

¹⁸ *Id.*

¹⁹ *Id.* Memorandum to Accompany the Record of Trial in the Case of 2d Lt. Albert C. Homcy (23 Oct. 1944) (Allied Papers).

²⁰ *Id.* Letter A.S. Hatem, to Sec'y of War Robert P. Patterson (27 July 1945) (Allied Papers).

trial” and that “there is no indication of any inability in his part to prepare properly for trial.”²¹

Homcy’s fortunes did change somewhat in January 1946 when, as part of a comprehensive decision by the Army to reduce the sentences of certain categories of prisoners, Homcy received additional clemency “by direction of the President.” In return for agreeing to re-enlist as a private in the Army, the government would remit the unserved portion of his confinement. No doubt wanting to avoid serving any more time in jail, Homcy reenlisted on 7 January 1946.²² He was honorably discharged eight months later, on 24 August 1946, and returned home to Clifton, New Jersey, and life as a civilian.

In the years that followed, Mr. Homcy began a lengthy struggle to clear his military record. In May 1951, he hired a Washington, D.C., attorney to file a petition asking that the findings be set aside and that he receive a new trial. Homcy’s principal argument was that the findings were “contrary to the weight of the evidence” and that he was not “legally responsible for his acts” because he did not “comprehend and understand the meaning of the order” given by LTC Bird.²³

Major General Ernest M. Brannon, The Judge Advocate General, denied Homcy’s petition on 5 August 1951. As Brannon explained in his decision:

It appears from the record of trial, and it is not now denied, that the accused willfully violated the order of his battalion commander while his unit was in contact with the enemy on the field of battle. The legality of the order is not questioned, and there is presented no persuasive evidence which would indicate that the petitioner was not responsible for his refusal to obey the order.

* * * *

The entire record of trial has been carefully reviewed, but there is disclosed no error prejudicial to the substantial rights of the accused. The court had jurisdiction

²¹ *Id.* Letter from Edward S. Greenbaum, to A.S. Hatem (14 Aug. 1945) (Allied Papers).

²² Headquarters, E. Branch, U.S. Disciplinary Barracks, Green Haven, N.Y., Special Orders No. 7 (7 Jan. 1946).

²³ Transcript of Record, *supra* note 1, Letter from Thomas H. King, to Major General E. M. Brannon (9 July 1951) (Allied Papers); NME Form 219, Petition for New Trial Under Article of War 53, Albert C. Homcy (4 May 1951) (Allied Papers).

over the petitioner and over the offense of which he was convicted, the evidence in the record supports the findings and sentence, and the sentence is not excessive.²⁴



Major General Ernest M. “Mike” Brannon

Unwilling to surrender to the Army’s legal bureaucracy, Homcy wrote to the Secretary of the Army on 29 May 1951, complaining that he “was brought to trial by an INCOMPETENT, tried and convicted by an illegal, unfair and unjust courts-martial [sic] on foreign soil.”²⁵ The gist of Homcy’s argument was that absence of a “law member”²⁶ at his court-martial meant that the proceedings were illegal and should be overturned. The Army informed Homcy that it had been within Major General Dahlquist’s discretion as the general court-martial convening authority “not to specifically direct the presence of a law member during the trial proceedings.”²⁷ Consequently, Homcy again did not see any relief.

²⁴ Transcript of Record, *supra* note 1, E.M. Brannon, Action Upon Application of Albert C. Homcy for Relief under Article of War 53 (6 Aug. 1951) (Allied Papers).

²⁵ *Id.* Letter from Albert C. Homcy, to Sec’y of the Army (29 May 1951) (Allied Papers) (all capital letters in original).

²⁶ The law member was a quasi-judicial officer under the Articles of War and was the forerunner of the law officer created by the Uniform Code of Military Justice in 1950 and the military judge created by the Military Justice Act of 1968. His powers were limited in that, while he advised the court-martial panel on the law, this advice was binding on that panel. Articles of War, art. 8 41 Stat. 788 (1920); MANUAL FOR COURTS-MARTIAL, UNITED STATES, paras. 40, 51d (1928).

²⁷ Transcript of Record, *supra* note 1, Letter from Francis X. Plant, Special Assistant, Undersecretary of the Army, to Sen. Harrison A. Williams, Jr. (15 Nov. 1965), United States v. Albert C. Homcy, CM 271489 (19 Oct. 1944) (Allied Papers).

On 21 June 1961, after filing an application with the Army Board for Correction of Military Records (ABCMR), Mr. Homcy appeared in person before the Board. Assisted by counsel furnished by the American Legion, Homcy once again argued that he had not been ably defended, lacked adequate time to prepare for trial, and that his court-martial conviction was unjust. His requested relief was that the ABCMR substitute an honorable discharge for the dismissal imposed by the general court-martial. The ABCMR denied his application. As Francis X. Plant, the special assistant to the ABCMR, wrote:

[Homcy] was given every opportunity to argue his contentions and to present all additional evidence available to him. Apparently feeling that the evidence was indisputable that he refused to obey an order from his superior officer while in the presence of the enemy and that he fully understood the consequences of his actions, the Board voted unanimously to deny Mr. Homcy's application.²⁸

On 1 March 1967, the ever-persistent Homcy filed yet another application with the ABCMR. This time, however, he alleged new grounds for relief: unlawful command influence (UCI). Homcy apparently had first become aware of UCI in his case in January 1966, when gathering affidavits from officers who had participated in his court-martial in 1944. Two of the five panel members claimed UCI. Then CPT Elden R. McRobert, who had served as a panel member, alleged that Major General Dahlquist "called all the members of the General Court-Martial Board for our division . . . and there gave all of us a very strong verbal reprimand for the way in which we had been fulfilling our responsibilities as members of the Board."²⁹ Another panel member, then CPT Lowell E. Sitton, wrote in a 20 January 1966 affidavit that "severe pressures were applied to court-martial boards in his division at or about the time of [Homcy's] trial to make findings of guilty 'for the good of the service' without regard to the rights of the individual or the merits of the particular case in question."³⁰ But the claimed UCI was not specifically directed toward 2LT Homcy, since neither McRobert or Sitton remembered participating in the case.

²⁸ *Id.*

²⁹ *Id.* Questionnaire from Captain (CPT) Elden R. McRobert, Petition for Correction of Military Record from Albert C. Homcy, to Army Bd. for Correction of Military Records (1 Mar. 1967) (included in the allied papers) (on file with Regimental Historian).

³⁰ *Id.* Sworn Statement of CPT E. Lowell (20 Jan. 1966) (on file with Regimental Historian).

As to UCI generally, however, Homcy learned from the trial counsel who had prosecuted him, then CPT John M. Stafford, that:

There was command pressure on the Court-Martial Boards of the 36th Division, as there were in many of the Divisions at the time. Usually the pressure was not to make findings of "guilty," but went to the matter of the sentences given.

* * * *

After the 36th Division was committed to combat, [Dahlquist], the Commanders, and members of the Court-Martial Board had a feeling that when a person was guilty of misbehavior before the enemy, that he should receive a severe sentence. This was a general feeling. The combat troops also had this view. At the time I prosecuted Lt. Homcy, I had no doubt he was guilty of direct disobedience of orders and misbehavior before the enemy.³¹

Despite this new evidence indicating UCI, the ABCMR denied Homcy's application without a hearing on 27 April 1967. Having failed once more to get relief from the Army, Homcy now took his campaign into the courts. On 22 December 1967, he filed suit against the Secretary of the Army in the U.S. District Court for the District of Columbia, seeking a declaratory judgment that his court-martial lacked jurisdiction (and that his conviction should be overturned) and a mandatory injunction ordering the ABCMR to correct his military records. Just as he had claimed in his latest ABCMR application, Homcy alleged in his suit against the Secretary of the Army that constitutional defects in his 1944 court-martial meant he had been deprived of a fair trial.³²

Presumably so as to have an administrative record upon which to base its response to Homcy's civil suit, the Army now ordered a formal hearing before the ABCMR on Homcy's application. In April 1968, at the request of the Board, COL Waldemar A. Solf, then Chief, Military Justice Division, Office of The Judge Advocate General, examined the legal issues raised by Homcy in his latest application. Solf, in line with earlier legal opinions, rejected Homcy's claim that the absence of a law member had adversely affected his trial. Colonel Solf also rejected any asserted

³¹ *Id.* Questions for John M. Stafford, Assistant Staff Judge Advocate and Trial Counsel (26 Mar. 1968), United States v. Albert C. Homcy, CM 271489 (19 Oct. 1944) (Allied Papers).

³² *Id.* Petition for Correction of Military Record from Albert C. Homcy, to Army Bd. for Correction of Military Records (1 Mar. 1967) (Allied Papers) (on file with Regimental Historian).

denial of effective assistance of counsel. On the issue of UCI, however, Solf carefully considered the affidavits provided by then CPTs McRobert and Sitton. Since Homcy had “made a full and unambiguous judicial confession” to misbehavior before the enemy, Solf concluded that there was no UCI issue as to findings. On the contrary, the real issue was whether “unlawful command control infected the sentence adjudged in Homcy’s case.”³³

As Solf noted, however, the “standard to be applied is the law as recognized in 1944” and not the test for UCI that exists under the UCMJ.³⁴ After discussing the law on UCI as it existed in 1944, Solf wrote:

In 1944, it was lawful for the convening authority, before any case was referred to trial, to provide court-martial members with information as to the state of discipline of the command, as to the prevalence of offenses which had impaired discipline, and command measures which had been taken to prevent offenses. Such instruction could also lawfully present the view of the War Department as to what were regarded as appropriate sentences for designated classes of offenses.³⁵

Colonel Solf ultimately concluded in his memorandum that the evidence on the issue of UCI in Homcy’s trial was “not conclusive” and it was up to the ABCMR to find the facts in the case.



Colonel Waldemar “Wally” Solf

³³ *Id.* Memorandum from The Judge Advocate Gen., for Army Board for Correction of Military Records (Waldemar A. Solf), subject: Comment and Legal Opinion, Albert C. Homcy, JAGJ 1967/8153, at 5 (1 May 1968) (Allied Papers).

³⁴ *Id.*

³⁵ *Id.* at 7.

So what did the Board do? After holding a formal hearing in Homcy’s case on 10 July 1968, the ABCMR again recommended denying his application and the Under Secretary of the Army so directed on 20 August 1968.

In early 1969, while his case was pending in the U.S. District Court, Homcy filed a “prayer for relief” with the Court of Military Appeals (COMA), arguing yet again that the absence of a law member at his court-martial meant that the proceedings were defective and that he also had been denied the effective assistance of counsel. Homcy also raised the issue of UCI before COMA insisting, as he had in his last ABCMR application, that the court members in his case had been “subjected to severe command pressure by the convening authority.” The Court of Military Appeals, however, did not reach the merits of Homcy’s petition, ruling that it lacked jurisdiction over Homcy’s court-martial because the proceedings in his case were finalized before 31 May 1951, the effective date of the Uniform Code of Military Justice (UCMJ).³⁶

With the ABCMR decision before him as the agency’s administrative record (and with COMA’s decision behind him), U.S. District Court Judge John Smith now considered Homcy’s case. The Army had moved for dismissal or, alternatively, for summary judgment. Homcy also had filed a motion for summary judgment based on the record of the ABCMR.

After considering all the evidence presented to him, Judge John Smith agreed with Homcy, and entered summary judgment in his favor. Judge Smith held that Homcy had been denied effective assistance of counsel. Relying on the affidavits from McRobert, Sitton, and Stafford, the judge also held that Homcy’s court-martial sentence “was illegal because it was based on improper command influence.”³⁷

Interestingly, Judge Smith did not overturn the court-martial conviction. Rather, he only granted a limited records correction—and the ABCMR, acting pursuant to the district court’s order, corrected Homcy’s military records to show an honorable discharge. Later, the Court of Appeals (D.C. Circuit), affirmed in *Homcy v. Resor*, but solely on the basis of improper command influence.³⁸

³⁶ *Id.* United States v. Homcy, Misc. Docket 69-35, Memorandum Opinion and Order (15 Aug. 1969) (Allied Papers). In *United States v. Sonnenschein*, 1 C.M.R. 64 (C.M.A. year) and *United States v. Musick*, 12 C.M.R. 196 (C.M.A. year), COMA ruled that it had no jurisdiction to review court-martial proceedings completed prior to the effective date of the UCMJ.

³⁷ *Homcy v. Resor*, 455 F. 2d 1345, 1348 (D.C. Cir. 1971).

³⁸ *Id.* at 1345. The Court of Appeals rejected the District Court’s finding that Homcy had been deprived of fair trial because his defense counsel was ineffective. It noted that the Articles of War did not require defense counsel to be a “licensed attorney” and, based on Major Wilson’s considerable experience, concluded that Wilson in fact was “much better qualified to

Amazingly, this success in federal court was not enough for Albert Homcy. He now filed a claim with the Army Finance Office for back pay, allowances, and other benefits—which had been taken from him as the result of the total forfeitures punishment imposed by the court-martial panel on 19 October 1944. In particular, Homcy argued that he was due pay and allowances from the date Major General Dahlquist took action in his case. The Army referred Homcy’s claim to the Comptroller General. The General Accounting Office subsequently denied Homcy’s claim, reasoning that Homcy had received everything he had requested from the U.S. District Court. Homcy now went back into Judge Smith’s court and moved to reopen his case in order to obtain a judgment for back pay. The district court denied the motion 12 October 1973.³⁹

Homcy then “shifted his efforts to the United States Court of Claims” and hired the Washington, D.C., law firm of Spaulding, Reiter and Rose to attempt to obtain back pay. On 16 June 1976, that court put an end to Homcy’s lengthy battle with the Army when it ruled that his claim was barred by the statute of limitations. Homcy’s claim for relief, ruled the Court of Claims, “initially accrued on the date he was improperly dismissed from the service.”⁴⁰ Since that date was 5 December 1944, he had only six years to file any money damage claim. The court expressly declined to revive Homcy’s money damage claims based on his recent success at the district court and ABCMR.⁴¹

So ended the strange case of 2LT Albert C. Homcy. An amazing legal saga that demonstrates, at least in part, that the old saying “persistence wins the prize” very much has some truth in it. Or, as Winston Churchill put it in a speech he gave in October 1941: “Never, never, in nothing great or small, large or petty, never give in except to convictions of honour and good sense. Never yield to force; never yield to the apparently overwhelming might of the enemy.”⁴² There is no question that Homcy “never gave in.” But whether or not justice was served as a result of his success in civilian court is very much an open question.

As for Albert C. Homcy? He spent his last days living in Washington, D.C., at the Soldiers’ and Airmens’ Home. He died when his heart stopped beating on 1 April 1987. Homcy was 71 years old.⁴³

*More historical information can be found at
The Judge Advocate General’s Corps
Regimental History Website
Dedicated to the brave men and women who have served our
Corps with honor, dedication, and distinction.
<https://www.jagcnet.army.mil/History>*

defend an accused in a court-martial proceeding than many fully licensed lawyers.” *Id.* at 1347.

³⁹ *Id.* at 1357.

⁴⁰ Homcy v. United States, 536 F. 2d 360, 363 (Ct. Cl. 1976).

⁴¹ *Id.*

⁴² THE CHURCHILL CENTRE, <http://www.winstonchurchill.org/learn/speeches/quotations/quotes-faq> (last visited Feb. 21, 2014).

⁴³ Bart Barnes, *World War II Army Officer Albert C. Homcy Dies at 71*, WASH. POST, Apr. 3, 1987.